



CRL.R.C.Nos.885 and 936 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2022

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.Nos.885 and 936 of 2018

and Crl.M.P.Nos.10055, 10063 and 10861 of 2018

Crl.R.C.No.885 of 2018:-

Kani @ Kanivalavan

... Petitioner

Vs.

The State by
The Inspector of Police,
Pallapatti Police Station,
Pallapatti, Salem District.
(Crime No.844 of 2013)

... Respondent

PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C to call for the entire records in so far relates to order passed by IIIrd Additional Sessions Court, Salem in C.A.No.63 of 2017, dated 08.06.2018 whereby confirming the order passed in S.C.No.68 of 2015, dated 16.05.2017 on the file of Chief Judicial Magistrate Court cum Assistant Sessions Judge, Salem, Salem District and set aside the same.



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Crl.R.C.No.936 of 2018:-

Saravanan

... Petitioner

Vs.

The State by
The Inspector of Police,
Pallapatti Police Station,
Pallapatti, Salem District.
(Crime No.844 of 2013)

... Respondent

PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C to call for the entire records in so far relates to order passed by IIIrd Additional Sessions Court, Salem in C.A.No.65 of 2017, dated 08.06.2018 whereby confirming the order passed in S.C.No.68 of 2015, dated 16.05.2017 on the file of Chief Judicial Magistrate Court cum Assistant Sessions Judge, Salem, Salem District and set aside the same.

In both Crl.R.Cs

For Petitioners	:	Mr.C.Prakasam
For Respondent	:	Mr.A.Gopinath Government Advocate (Crl. Side)

COMMON ORDER

These Criminal Revision cases have been filed as against the order passed in C.A.No.63 of 2017 and C.A.No.65 of 2017, dated 08.06.2018



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on the file of the IIIrd Additional Sessions Court, Salem whereby confirming the order passed in S.C.No.68 of 2015, dated 16.05.2017 on the file of the learned Chief Judicial Magistrate Court cum Assistant Sessions Judge, Salem, Salem District, thereby convicted A1 for the offences punishable under Sections 341, 392 r/w 397 of IPC and A2 for the offences punishable under Sections 341, 392 r/w 34 of IPC.

2. The case of the prosecution is that the victim was working as a cashier in “Quality Electronics”. On 22.11.2013, when the victim was returning from her work at about 09.45 p.m., in front of the house of one Rathinavel, by her TVS Scooty, the accused persons followed her in a motor cycle bearing Registration No.TN 30 AL 5671, Bajaj Discover, overtook her vehicle and waylaid her. Thereafter, they threatened her at knife point with dire consequences and robbed her gold chain weighing 1 $\frac{3}{4}$ sovereigns. When the general public attempted to rescue the victim, they had shown the knife and escaped from the place of occurrence. On the complaint, the respondent registered an FIR in Crime No.844 of 2013.



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3. After completion of investigation, the respondent filed a final report and the same has been taken cognizance in S.C.No.68 of 2015 by the Trial Court for the offences punishable under Sections 341, 392 r/w 397 and 506(ii) of IPC as against A1 and for the offences punishable under Sections 341, 392 r/w 34 and 506(ii) of IPC as against A2.

4. In order to bring home the charges, the prosecution had examined P.W.1 to P.W.9 and marked Exs.P.1 to P.12. The prosecution had also produced material objects, which were marked as M.O.1 to M.O.3. On the side of the petitioners, no one was examined and no document was marked. On a perusal of oral and documentary evidence, the Trial Court found A1 guilty for the offence punishable under Section 341 of IPC and sentenced him to undergo two months rigorous imprisonment and also found him guilty for the offences punishable under Sections 392 r/w 397 of IPC and sentenced him to undergo seven years rigorous imprisonment with a fine of Rs.500/-, in default to undergo two months rigorous imprisonment. A2 was found guilty for the offence punishable under Section 341 of IPC and was sentenced to undergo two months rigorous imprisonment and he was also found guilty for the



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offences punishable under Sections 392 r/w 34 of IPC and was sentenced to undergo two years rigorous imprisonment with a fine of Rs.500/-, in default to undergo two months rigorous imprisonment. Aggrieved by the same, the petitioners preferred appeals and the same were dismissed, confirming the order passed by the Trial Court. Hence, these revisions.

5. The learned counsel for the revision petitioners submitted that though the petitioners were unknown to the defacto complainant, there was no identification parade conducted by the prosecution. Therefore, the defacto complainant never identified the accused except before the Court. The defacto complainant used to put her signature in Tamil. Whereas, she deposed that she did not know Tamil and she used to put her signature in English. Therefore, there was contradiction in lodging the complaint itself and the prosecution failed to prove the case beyond any doubt. She deposed that she received her articles from the Police Station, but actually she received the articles from the Court. P.W.2 to P.W.5 are close relatives of P.W.1 and the prosecution failed to examine any independent witness to prove its case. At the time of the alleged occurrence, 4 to 5 persons



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have rushed to the place for her rescue. They also made an attempt to catch the accused, but they were not examined by the prosecution to prove the same. P.W.1 also deposed that the occurrence had taken place in an isolated lane and there was no public. However, on contrary, she further stated 4 to 5 persons have rushed to the place for rescue and also attempted to catch the accused. However, the Courts below without considering the contradictions, mechanically convicted the accused.

6. Per contra, the learned Government Advocate (Crl.Side) appearing for the respondent would submit that it is a clear case of robbery, since both the accused are habitual offenders. On the date of occurrence, when P.W.1 was returning to her home, after finishing her work on 22.11.2013, at about 09.45 p.m., the petitioners waylaid her and threatened her at knife point and snatched her gold chain. P.W.1 clearly identified the accused and as such there is no question of Test Identification Parade. Though, P.W.2 to P.W.5 are relatives of P.W.1, there is absolutely no evidence to disbelieve their evidence. The minor contradictions are not fatal to the case of the prosecution and as such the



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Court below rightly convicted the petitioners.

7. Heard, Mr.C.Prakasam, learned counsel appearing for the petitioners and Mr.A.Gopinath, learned Government Advocate (Crl. Side) appearing for the respondent.

8. A perusal of records revealed that the victim was working as a cashier in “Quality Electronics”. On 22.11.2013, when the victim was returning to home from her work at about 09.45 p.m., the accused came from her back by a two wheeler and waylaid her. They threatened her at knife point and they snatched her gold chain and ran away from the place of occurrence. P.W.1 categorically deposed that she was waylaid by the accused in a motor cycle and at knife point, they snatched her chain. The petitioners raised a ground that according to P.W.1, it was snatched from her neck. However, it was returned to her without any damage to the chain. If the chain was snatched from the neck of P.W.1, it would have broken. However, there was no cross examination of P.W.1 or any other witness. On the confession, there was recovery from A2 in the presence of



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Mahazar witnesses. In fact, after snatching the chain, the accused fell down and left the vehicle and ran away from the place of occurrence. The vehicle was seized and produced before the Trial Court. That apart, when P.W.1 identified the accused, there is no question of Test Identification Parade. The minor contradictions as pointed by the learned counsel for the petitioners could not cause much damage to the case of the prosecution, since the recovery was clearly proved by the prosecution. Therefore, the Courts below rightly convicted the petitioners and therefore nothing warrant to interference by this Court.

9. However, the learned counsel for the petitioners submitted that the sentence imposed on the petitioners may be reduced.

10. Considering the submission made by the learned counsel for the petitioners, the conviction and sentence as against A2 is hereby confirmed. Insofar as A1 is concerned, the conviction is hereby confirmed, the sentence imposed on him for the offences punishable under Sections 392 r/w 397 of IPC is reduced from seven years to four



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years.

11. Accordingly, the Criminal Revision case in Crl.R.C.No.885 of 2018 is partly allowed and Crl.R.C.No.936 of 2018 is dismissed. Consequently, connected Miscellaneous petitions are also closed.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mn

G.K.ILANTHIRAIYAN, J



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To

1. The IIIrd Additional Sessions Court, Salem.
2. The Chief Judicial Magistrate Court cum Assistant Sessions Judge, Salem, Salem District.
3. The Inspector of Police,
Pallapatti Police Station,
Pallapatti, Salem District.
4. The Public Prosecutor,
High Court, Madras.

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